IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8942 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DINESHBHAILAXMANBHAIVACHHANI - Petitioner(s)

Versus

GUJARAT ELECTRICITY BOARD & 2 - Respondent(s)

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Appearance :

MR MUKESH DAVE for Petitioner(s) : 1,MR BHAVESH P TRIVEDI for Petitioner(s) : 1,
MR HS MUNSHAW for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 15/12/2005

ORAL JUDGMENT

1. In this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, direction and / or order

directing the respondent to give residential electric connection to the petitioner without insisting for the payment of the outstanding dues of the erstwhile owner.

2. It is the case on behalf of the petitioner that the property / residential premises in question was owned by one Hansa Chandulal Mansara and the petitioner purchased the same by registered sale deed dated 2.3.2000. It is also contention on behalf of the petitioner that when the petitioner got vacant possession of the aforesaid residential premises, electric connection being Consumer No.36207 / 0 / 2535 /9 Meter No.860355 was already installed and the same was in working condition. It is also contention of the petitioner that in fact, the petitioner also paid consumption bill for the electricity for two months after the petitioner purchased the aforesaid residential premises. It appears that thereafter the electricity connection was disconnected and it is the contention on behalf of the petitioner that when the petitioner inquired, the petitioner was informed that there was outstanding of Rs.30,206/- of the

previous owner Hansaben Chandulal Mansara and unless the petitioner pays the said amount, the electricity supply will not be reconnected and therefore, relying upon the judgment of the Hon'ble Supreme Court in case of ISHA MARBLES V. BIHAR STATE ELECTRICITY BOARD reported in (1995) 2 SCC p.648, the petitioner has preferred the present Special Civil Application for the aforesaid relief.

3. This Court by interim order dated 3.5.2002 directed the respondents to reconnect the electricity supply on deposit of Rs.15,000/- toward the past bill subject to further adjustment in future bills, if ultimately the petitioner succeeds. Accordingly, on deposit / payment of Rs.15,000/- electricity supply has been reconnected.

4. Shri Mukesh Dave, learned advocate appearing on behalf of the petitioner has vehemently submitted that insistence on the part of the respondents to pay an amount of Rs.30,206/- towards the dues of the erstwhile owner before reconnection of the electricity supply is absolutely illegal, unjust,

arbitrary and contrary to the law laid down by the Hon'ble Supreme Court in case of ISHA MARBLES V. BIHAR STATE ELECTRICITY BOARD (Supra). He has also further submitted that in fact, the Condition-2(J) upon which reliance has been placed by the respondent Board is not applicable in the present case as the Condition-2(J) came into existence in the month of August, 2001 and the petitioner has purchased the property in question prior thereto, more particularly, on 2.3.2000. Not only that even bills are dated 3.6.2000 and 12.3.2001 respectively, i.e. Prior to even incorporation of Condition-2(J). Under the circumstances, it is requested to allow the present special civil application and either to refund the amount of Rs.15,000/- deposited by the petitioner pursuant to the interim order passed by this Court dated 3.5.2002 or to direct the respondent to adjust the same in future bills.

5. Per contra, Shri H.S.Munshaw, learned advocate appearing on behalf of the petitioner has heavily relied upon Condition-2(J) by which Condition-2(J) is added in the Conditions of Supply, by which, even

subsequent purchaser is liable to pay the dues of the erstwhile owner. He has also submitted that as the amount of Rs.30,206/- was due and payable by the erstwhile owner, petitioner was liable to pay the said amount before requesting for reconnection of the electricity supply and therefore, it is requested to dismiss the present special civil application.

6. Heard the learned advocates appearing on behalf of the parties.

7. It is not in dispute that the Condition-2(J) is one of the conditions of supply of electric energy which came to be incorporated and has come into existence on and from 10.8.2001. The petitioner has purchased the property in question on 2.3.2000. Even the disputed bills came to be issued for the malpractice committed by the erstwhile owner prior to 2.3.2000 came to be issued on 3.6.2000 (for Rs.25,971.08 ps) and on 12.3.2001 (for Rs.4,235.03 ps). Under the circumstances the alleged dues of the erstwhile owner are obviously prior to August, 2001 / June, 2001 i.e. prior to incorporation of the

Condition-2(J). Under the circumstances, reliance placed upon condition-2(J) by the respondent Board is misplaced and cannot be made applicable to the facts of the case on hand. Condition-2(J) cannot be made applicable retrospectively and it is always made applicable prospective. Under the circumstances, insistence on the part of the respondent Board directing the petitioner to pay an amount of Rs.30,206/- being the dues of the erstwhile owner before requesting for reconnection of the electricity supply is contrary to the law and even contrary to the judgment of the Hon'ble Supreme Court in case of ISHA MARBLES V. BIHAR STATE ELECTRICITY BOARD (Supra), wherein the Hon'ble Supreme Court in the aforesaid case has held that unless there is condition, by which, there will be a liability of subsequent purchaser to pay the dues of the erstwhile owner, the Electricity Company cannot insist for the payment of the dues of the erstwhile owner from the subsequent purchaser. In view of the above judgment of the Hon'ble Supreme Court in case of ISHA MARBLES V. BIHAR STATE ELECTRICITY BOARD (Supra), the present special civil application is required to be allowed.

8. For the reasons stated above, the petitioner succeeds. The action of the respondent in insisting for and / or directing the petitioner to pay the amount of Rs.30,206/- towards the dues of the erstwhile owner before requesting for reconnection of the electricity supply is hereby quashed and set aside and it is held and directed that the respondent cannot insist for aforesaid payment from the petitioner. The amount of Rs.15,000/- deposited by the petitioner pursuant to the interim order passed by this Court dated 3.5.2002 is directed to be adjusted in subsequent energy consumption bills and the respondent is directed to give the credit of aforesaid amount of Rs.15,000/- accordingly.

9. Rule is made absolute to the aforesaid extent, however, there shall be no order as to costs.

[M.R.Shah, J.]

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